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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MADY HORNIG,

Plaintiff,

v.

17 CV 3602 (ER)

TRUSTEES OF COLUMBIA  
UNIVERSITY IN THE CITY OF NEW  
YORK, ET AL.,

Defendants.

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New York, N.Y.  
July 19, 2018  
11:30 a.m.

Before:

HON. EDGARDO RAMOS,

District Judge

APPEARANCES

BRILL & MEISEL

Attorneys for Plaintiff

BY: ROSALIND S. FINK

-and-

EISENBERG & SCHNELL, LLP

Attorneys for Plaintiff

BY: HERBERT EISENBERG

BUCKLEY SANDLER, LLP

Attorneys for Defendant Trustees of Columbia University

BY: ROSS E. MORRISON

DANA W. KUMAR

JACKSON LEWIS, P.C.

Attorneys for Defendant Walter Ian Lipkin

BY: SUSAN D. FRIEDFEL

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1 THE DEPUTY CLERK: Hornig v. Trustees of Columbia  
2 University, et al. Counsel, please state your name for the  
3 record.

4 MS. FINK: Rosalind Fink, counsel for plaintiff.

5 MR. EISENBERG: Herbert Eisenberg, Eisenberg & Schnell  
6 for plaintiff.

7 MR. MORRISON: Ross Morrison and Dana Kumar for  
8 Columbia University.

9 MS. FRIEDFEL: Susan Friedfel for Walter Lipkin.

10 THE COURT: This matter is on for an initial  
11 conference, so Mr. Eisenberg or Ms. Fink, let me begin with  
12 you. Tell me a little bit about your case.

13 MS. FINK: Okay. Let me start with telling you a  
14 little bit about my client, Dr. Hornig. She's one of the  
15 world's leading researchers looking at relationships of  
16 infection and immunity on brain disorders, most particularly  
17 chronic fatigue syndrome and autism.

18 Since she went to Columbia, she has received more than  
19 \$24 million in grants where she is named as either a principal  
20 investigator, the person named as in charge of the grant, or as  
21 a local subcontract principal investigator. Most of that money  
22 is from federal, for federally funded research.

23 THE COURT: How long has she been with Columbia?

24 MS. FINK: Since 2001.

25 THE COURT: Okay.

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1 MS. FINK: She's also published more than 120  
2 scientific papers, and until June 20, she was a member of  
3 Columbia's Center for Infection and Immunity.

4 THE COURT: June 20 of what year?

5 MS. FINK: Of this year. Of this year. Mr. Eisenberg  
6 will explain what happened on June 20, which is the reason why  
7 we had asked for this conference.

8 The center is headed by the defendant, Ian Lipkin, and  
9 she, Dr. Hornig and Dr. Lipkin began collaborating in 1996 when  
10 she was at Penn and they were -- became a couple when she was  
11 recruited to Columbia in 2001.

12 She joined Columbia as an associate professor in the  
13 School of Public Health and as a researcher. The personal  
14 relationship ended in 2011, but they continued to work together  
15 professionally. And until she was kicked out of the center, in  
16 June, she was the person who brought in the most grant money  
17 other than Dr. Lipkin in the center.

18 One more introductory point. Columbia itself has  
19 acknowledged she is "one of the world's leading researchers in  
20 chronic fatigue syndrome."

21 The events that brought us here started in July of  
22 2015. Dr. Lipkin learned that Dr. Hornig had spoken to human  
23 resources at the School of Public Health about an incident that  
24 had deeply disturbed her that had happened a few weeks earlier.  
25 He had, there had been a meeting, he said I want you to look at

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1 something in my office, it's urgent. She accompanied him to  
2 his office, he locked the door, he dropped his pants and he  
3 said please look at this lesion on my buttocks. She was  
4 embarrassed. She did it. She said this is what I think it is  
5 because she is an M.D.

6 She went to leave, and as she was trying to leave, she  
7 noticed one of his assistants on the other side of the locked  
8 door waiting for the door to be unlocked. She was humiliated.  
9 She was humiliated by the whole event, but particularly by  
10 that.

11 She confided to one friend. Didn't want to tell HR,  
12 didn't want to do anything with it because she knows about his  
13 capacity for retaliation. It was reported despite her. She  
14 went to speak to HR, she told them about the incident.

15 THE COURT: It was reported by whom?

16 MS. FINK: We believe now it was in fact reported by  
17 Lipkin after the person she had told, told somebody in the  
18 center who said to Lipkin, she has talked about this incident,  
19 and that he preemptively went to HR. That's never been  
20 confirmed, but that's what it seems.

21 She was told by someone at the center, HR wants to  
22 talk to you, and given the name and the phone number of someone  
23 in HR. So she went.

24 He then started a campaign of retaliation that had  
25 three main goals. One was to keep her from meeting her goals

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1 on her grants, to keep her from being productive. The second  
2 one was to keep her from writing successful future grants.  
3 Understand she's funded solely by these grants. She doesn't  
4 get money from Columbia. She has to earn her keep as it were.  
5 The third thing was to destroy her reputation.

6 The complaint is very long. Mr. Eisenberg thinks it's  
7 too long, and the reason is it only hits the highlights of the  
8 things he did.

9 THE COURT: Let me ask you this. You said she is not  
10 paid by Columbia?

11 MS. FINK: Right. What happens is she brings in  
12 grants, the grants include funding for her salary. So she  
13 gets, she's paid by Columbia in the sense they write the  
14 checks, but the money comes in from the outside grants. I  
15 think they have to pay 10 percent. The rule is Columbia has to  
16 support her salary by 10 percent. The other 90 percent is from  
17 the grants she brings in.

18 THE COURT: She is, strictly speaking, a Columbia  
19 employee?

20 MS. FINK: Oh, yes, absolutely. I'm sorry if that  
21 wasn't clear. Absolutely. She is a Columbia employee.

22 I just wanted to give you one example of the sorts of  
23 things that he did. And because this is in the complaint and  
24 it goes on for a while. He took, as the person in charge of  
25 the center, he was the one in charge of all the people who are

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1 paid by her grants, his grants and everybody's else's grants,  
2 all the staff. He started telling staff members, technicians,  
3 postdocs, that they could not work on her grants. They had to  
4 work on other grants, other projects. He then took money that  
5 were in grants for her projects, for her people, paid other  
6 people with them, people who were not doing any work on the  
7 grants. He also kept her from having access to the data that  
8 would have shown that he was diverting the money.

9 She complained first internally at the School of  
10 Public Health. They did nothing. I wrote a letter to  
11 Ms. Friedfel who was then representing Columbia as well as  
12 Dr. Lipkin, and after that, she was called to a meeting with  
13 administrators at the medical school and there was an  
14 investigation. Columbia's never told us the result. They've  
15 never given us the report. But Dr. Lipkin has said repeatedly  
16 in meetings of center faculty we've had to give back --

17 THE COURT: Meetings of?

18 MS. FINK: Of the faculty at the Center for Infection  
19 and Immunity where they both work. He has said repeatedly we  
20 don't have any money because we've had to give back over a  
21 million dollars because of the complainant. Looking at  
22 Dr. Hornig. And he has said this repeatedly.

23 So we are assuming that Columbia did an investigation,  
24 it confirmed what we thought, which is he diverted over a  
25 million dollars in funds that were supposed to be used on her

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1 project, and so they had to return it to the federal government  
2 because it wasn't used in the way it was supposed to be used.  
3 That's just one example.

4 What does that mean. It made it harder for her to  
5 meet her goals on her projects because the people weren't made  
6 available to do the research. It harmed her career,  
7 professionally, it made the granting agencies question her  
8 capacity, her abilities. And he's also harming her reputation,  
9 both internally, and with outside collaborators who are hearing  
10 these stories about her missing deadlines. That's just one  
11 example.

12 Now if I could ask Mr. Eisenberg to talk about what  
13 happened more recently.

14 THE COURT: Okay.

15 MR. EISENBERG: Thank you, your Honor.

16 THE COURT: When was the incident involving the  
17 dropping of the pants?

18 MS. FINK: It was in July 2015.

19 THE COURT: So, three years ago.

20 MS. FINK: On July 9, 2015.

21 THE COURT: Three years ago.

22 MR. EISENBERG: Yes.

23 THE COURT: Okay.

24 MR. EISENBERG: There were significant efforts made to  
25 resolve the disputes between all of the parties prelitigation

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1 and as well post-litigation. There was a mediation effort that  
2 took approximately a year through the auspices of the Southern  
3 District mediation program.

4 On May 30, the mediator entered his final report on  
5 the docket that the parties were unable to reach consensus,  
6 resolve the case. And on May 31, the retaliatory scheme all of  
7 the sudden accelerated precipitously.

8 On May 31, Dr. Hornig received an e-mail from the vice  
9 dean of the Mailman School of Public Health, of which the  
10 Center for Infection and Immunity is part of, stating that her  
11 membership in the center was being revoked, that the new member  
12 she was planning to hire pursuant to her grants would be housed  
13 at the center, but she would no longer be housed at the center.  
14 That her grants would not be managed by the center with the  
15 exception of jointly held grants with Dr. Lipkin.

16 So, when a grant is applied for, there is a principal  
17 investigator, perhaps two principal investigators, perhaps  
18 three. Could be any number. But there are many grants that  
19 Dr. Lipkin and Dr. Hornig had applied for in tandem, together,  
20 they would both be principal investigators. Each of these  
21 grants has line items for their budget. It includes staffing,  
22 it includes salary, it includes equipment, it includes space,  
23 it includes any number of things.

24 THE COURT: Can I ask, did they jointly apply for  
25 grants after this July 2015 incident?



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1 MR. EISENBERG: I believe they did, your Honor.

2 THE COURT: Okay.

3 MS. FINK: I'm not sure that's true. And Ross may  
4 know. At one point he announced he would no longer apply  
5 jointly with her on any grants. And then at some point I think  
6 he retracted that, that he also had announced she couldn't use  
7 any center staff to apply for future grants. He also backed  
8 off on that.

9 MR. EISENBERG: Dr. Hornig was told that there would  
10 be no assistance provided or no accommodation was made to  
11 provide assistance to facilitate the transition of her grant  
12 portfolio, leaving her fiscal year 2019 budget in jeopardy. As  
13 I said, there is staffing provided for in the grants, there are  
14 percentage of effort determinations made in the grant  
15 proposals. Somebody will provide 50 percent of their effort  
16 toward a particular project, they should be working 50 percent  
17 of their time on that project. Their salary is covered  
18 50 percent by that project. Yet, one of the people who were  
19 ascribed to a 50 percent effort on one of her project was --  
20 and she was -- and that person was told that Dr. Hornig could  
21 only use 15 percent of that person's time, which we believe  
22 didn't comport with the application and the funding  
23 prerogative.

24 In addition, access to her lab and clinical data would  
25 only be available to her through a shared hard drive, but

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1 access to certain data remained unavailable because much of the  
2 data wasn't uploaded to the shared drive, access to that shared  
3 drive remotely was made particularly difficult.

4 Dr. Hornig was moved from the center, and her office,  
5 while she was at a conference in London. All of her items were  
6 boxed up, relocated to another part of the building about 10  
7 minutes away. It is in the exact opposite corner, different  
8 floor, different elevator banks.

9 And she gets back to work from London and she no  
10 longer has her office, and finds herself in a tiny room, a  
11 relatively tiny room filled with boxes from end to end that are  
12 unmarked, that house all of her stuff taken out of file  
13 cabinets, it has no lock, it had no phone, it didn't have  
14 internet.

15 THE COURT: I take it this was done without her  
16 knowledge?

17 MS. FINK: Yes. They had told her she was going to be  
18 moved. They didn't tell her while she was gone they were going  
19 to go in there, throw her stuff in boxes, and move her to  
20 another office.

21 THE COURT: Did they provide a reason?

22 MS. FINK: All she was told by the dean is it is our  
23 prerogative.

24 MR. EISENBERG: She specifically asked why I was being  
25 moved, and that was the response.

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1 THE COURT: Okay.

2 MR. EISENBERG: She was also told she would be given  
3 lab space. Her own lab space. Yet, to date that has yet to  
4 occur.

5 Most recently, we have a significant problem. As a  
6 scientist, she has samples that are frozen samples, much of  
7 them stored in the center, much of it stored off site at a  
8 facility in the Bronx and other sites as well.

9 She is now being told that she can no longer store her  
10 samples, meaning on the grants that she has exclusively, and  
11 they will, she has to identify which ones she would like to  
12 keep, otherwise she will lose control over them, and they will  
13 be sent to her. However, she has no lab and no refrigeration  
14 to maintain these samples. So 20 years of her effort might be  
15 placed in significant jeopardy. We are particularly concerned  
16 of the irreparable harm that might ensue from that individual  
17 action.

18 But also, as you can imagine, moving somebody from  
19 their office without their participation, boxing up their stuff  
20 without their participation, and limiting her lab space to one  
21 small portion of one floor of the center, the center entails  
22 three floors, she is not allowed to be on the other two floors  
23 where most of her staff is located, she is not allowed to go up  
24 there to meet with her staff. She can only communicate with  
25 them in her office, but sometimes they're not allowed to go to

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1 her office. She can only communicate with them by telephone.  
2 They put impediments in her ability to perform her functions in  
3 a significant and extremely difficult and emotionally  
4 challenging way.

5 Her ability to get work done has been compromised.  
6 Her ability to apply for additional grants has been  
7 compromised. And we are concerned that her ability to do so in  
8 the future will be further compromised by the destruction of  
9 much of her effort.

10 THE COURT: Let me ask you this. I take it this is  
11 not the typical sort of lack of getting tenure type of  
12 situation. Has she been subject to a performance appraisal  
13 since July 2015?

14 MS. FINK: Since July -- she was put up for promotion.  
15 But the department in epidemiology that was reviewing it  
16 noticed that there was no letter from Dr. Lipkin in that file.  
17 She had been told by one of the associate deans that they would  
18 explain to the chair of epidemiology why Lipkin was not writing  
19 a letter in support. That apparently was not done. She met  
20 with the head of epidemiology. He had some explanations for  
21 why the promotion was denied, which largely had to do with the  
22 fact that she didn't have sufficient publications independent  
23 of Dr. Lipkin. She obviously now is doing publications  
24 independent of Dr. Lipkin.

25 But that's not -- that's one of our claims, but it's

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1 not really the heart of the claim. The heart of the claim is  
2 that he is just keeping her from doing her research, and doing  
3 her science.

4 THE COURT: But there's no indication that she has  
5 since July 2015 been evaluated to be an unsatisfactory employee  
6 in any fashion.

7 MS. FINK: Well, to our knowledge, no. But there is  
8 an ominous statement in a letter that she got from the dean  
9 which said something about she would -- was it she would be  
10 funded through July 2019, something would happen through  
11 July 2019. Which seemed to suggest that in their mind, this  
12 may be some kind of end date.

13 As far as she understands, as long as she continues to  
14 fund herself, to bring in the grants to fund her salary, then  
15 she has a place. She thought she had a place in the center  
16 until a few weeks ago.

17 THE COURT: But she has not been told.

18 MS. FINK: That's correct. She has not been told  
19 you're out.

20 THE COURT: She hasn't been told she is under any  
21 disciplinary process.

22 MS. FINK: No.

23 THE COURT: Okay.

24 MR. EISENBERG: In that office that she was placed,  
25 unfortunately there was a water leak, water damage to the

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1 ceiling, ceiling tiles fell, mold and mildew has ensued. We  
2 have a very unworkable professional situation. That is  
3 problematic and needs to be addressed unfortunately more  
4 quickly than we think this case will be concluded.

5 THE COURT: Let me ask this. Is she still working  
6 through grants that have been given to her through the auspice  
7 of the university?

8 MR. EISENBERG: Absolutely.

9 MS. FINK: Well, the grants come from federal  
10 agencies.

11 THE COURT: I understand.

12 MS. FINK: But the issue isn't the current funding.  
13 It is she has to forever write grants. And it is much harder  
14 for her to write grants. She doesn't have the support she  
15 needs to write future grants. Grants require you to name  
16 specific people who are going to work on the grants. Before  
17 June whatever it was, she was naming people at the center who  
18 had the expertise to work on those grants. Now, it is not at  
19 all clear she can name people on the center staff, because she  
20 can't even go to where they work.

21 THE COURT: The grants that she's currently servicing,  
22 if that's the appropriate terminology, approximately how much  
23 do they amount to if you know?

24 MS. FINK: I don't know.

25 MR. EISENBERG: In dollar figures?

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1 THE COURT: Yes.

2 MS. FINK: I don't know. I know they are throwing off  
3 enough money for her salary. I know that, in other words, she  
4 has to bring in 90 percent, I know she has more than 90 percent  
5 at the moment, but I don't know the total end.

6 MR. EISENBERG: We also believe she brings in the  
7 second highest amount of grants while she was on the center  
8 staff of the entire center staff.

9 THE COURT: Is she still working collaboratively, if  
10 not on a friendly basis, with Dr. Lipkin?

11 MS. FINK: She has to on the grants where they are  
12 both PIs.

13 THE COURT: The PI is?

14 MS. FINK: Principal investigator. There is an issue  
15 of his not including her in meetings that he should be  
16 including her in on grants where she is a PI or co-PI, and  
17 that's an issue we tried to address unsuccessfully.

18 THE COURT: Let me ask you, are you asking me to do  
19 anything in particular concerning the current situation?

20 MR. EISENBERG: We'd like to hear what defendants have  
21 to say with regard to trying to preserve what was the status  
22 quo let's say two months ago, so she can get her work done,  
23 have lab space, and function in a professional capacity. And  
24 after that, we might have to ask the Court's intervention.

25 THE COURT: Okay. Ms. Kumar or Mr. Morrison.

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1 MR. MORRISON: So I guess there are a few things to  
2 address. Plaintiff's counsel has made a number of allegations  
3 and statements about the situation at Columbia, and I guess I  
4 will say we couldn't disagree more about what the actual facts  
5 are and have been.

6 Let me start very briefly about the background of the  
7 case, which kind of informs what has gone on here which  
8 plaintiff's counsel alluded to.

9 Dr. Lipkin and Dr. Hornig were in a personal  
10 relationship for many years. Over a decade. Dr. Lipkin and  
11 not Dr. Hornig was recruited to Columbia. Dr. Lipkin is a  
12 world-renowned scientist, he's known throughout the country and  
13 the world, he speaks regularly throughout the country,  
14 throughout the world, travels internationally very frequently.  
15 He's been called the world's most celebrated virus hunter.

16 And plaintiff, by contrast, is really not of the same  
17 prominence. Plaintiff was hired at Columbia because Dr. Lipkin  
18 insisted since they were in a relationship, she be able to come  
19 with him to Columbia. In fact, there is notation in the file  
20 as to why her application was being pushed through with such  
21 alacrity. That kind of informs the background here.

22 When their relationship broke down in 2011, things  
23 sort of went south, and it is clear plaintiff does not like  
24 Dr. Lipkin, and really her actions sort of reflect that she's  
25 not happy working with him. She's not happy to have him as her



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1 supervisor, and was not happy in the center.

2 The bottom line, and I can get into some of the  
3 specifics, but I'll try to keep it a little more brief than  
4 plaintiff's counsel. Plaintiff is not a very productive  
5 scientist. For many years when she was together with  
6 Dr. Lipkin, they worked together. They continued to work  
7 together, but when they were together and in a relationship,  
8 they worked together on many grants and applications for  
9 grants. And he supported her, and in fact in many ways helped  
10 her above and beyond what he would do for another co-faculty  
11 member.

12 After that relationship ended, he stopped in essence  
13 preferring her in that way, and treated her just as he would  
14 any other faculty member in the Center for Infection and  
15 Immunity, and let her rise or fall on her own accord. And for  
16 the most part, she's fallen. She is not a good grant writer,  
17 which is sort of the lifeblood of the work they do in the  
18 center. She's not very productive. She regularly misses  
19 deadlines.

20 These facts will be borne out not just by Dr. Lipkin,  
21 but other members of the faculty inside and outside the center.

22 That's sort of been the driving animus here of what  
23 the problems have been in terms of plaintiff's work at the  
24 center.

25 In terms of her specific claims, she has a claim of

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1 discrimination as far as that relates to failure to promote.  
2 She made one application to be promoted to full professor. Her  
3 title is still associate professor. There was another male  
4 applicant which -- this is gender discrimination. He was also  
5 not promoted. So I don't think she can state a prima facie  
6 case under Title VII case law.

7 As far as this incident with the buttocks, which  
8 occurred a number of years ago at this point, Dr. Lipkin at the  
9 time was about to travel to internationally, he had a lesion,  
10 in fact, on his buttocks that was becoming infected. He was  
11 worried about traveling internationally. Dr. Hornig happens to  
12 be a medical doctor in addition to a researcher. And so, given  
13 the nature of their prior relationship, he called her into his  
14 office and did in fact show her the lesion and asked her  
15 whether he can travel internationally, whether he needed some  
16 kind of antibiotic treatment on it. That was obviously not the  
17 best choice on his part. He was reprimanded for doing that.  
18 It was not good judgment. However, it has nothing to do with  
19 any kind of discrimination.

20 THE COURT: Was there an investigation conducted by  
21 Columbia in connection with that incident?

22 MR. MORRISON: Yes. HR looked for it. Dr. Lipkin was  
23 more than forthcoming. He was informed he should not have done  
24 that, it was inappropriate, and he exercised poor judgment, and  
25 that was we thought the end of that.

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1 THE COURT: When was it resolved?

2 MR. MORRISON: I think shortly after the incident  
3 occurred in July of 2015. So a month or two. There has been  
4 nothing of any sort since then in terms of a harassment-type  
5 claim, and I think as your Honor I'm sure is well aware, under  
6 case law, one isolated incident occurring under the  
7 circumstances I just described many years ago is certainly not  
8 enough to make any kind of harassment claim. So that informs a  
9 lot of the background here.

10 Let me talk a little bit about the transfer, recent  
11 transfer out of Center for Infection and Immunity. I think  
12 there are a few issues here. One, let me just start with the  
13 basics why that occurred, and then I'll get to how it occurred,  
14 which I think what occurred is not what the plaintiff  
15 described.

16 The reason she was transferred is because of her lack  
17 of collaboration essentially with other faculty, including  
18 Dr. Lipkin in the center. The center is a very closely knit  
19 community of scientists, they depend on collaboration for their  
20 work there. They bounce ideas off each other to talk about  
21 grants, to talk about future avenues of research. And they  
22 have weekly meetings to do that, which Dr. Lipkin often will  
23 hold, and which all the scientists there will talk about what  
24 they're working on, bounce ideas, as I said, off one another,  
25 and sort of where the center is going and what directions they

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1 should be doing.

2 Dr. Hornig attended these meetings, and her usual  
3 comment -- this will be again borne out by multiple  
4 witnesses -- is that her only comment will be I'm working on  
5 grants or I'm working on a specific grant, but offer no further  
6 details and just stop at that and not really participate. It  
7 is clear she did not want to be in the center nor did she want  
8 to be supervised by Dr. Lipkin, which is a little bit ironic.  
9 She's complaining about the transfer out of the center, which  
10 she wants to be no longer supervised by Dr. Lipkin. She does  
11 not communicate with Dr. Lipkin. It makes it very difficult as  
12 an administrative matter for him or the other administers in  
13 center to run the center. Plaintiff does not tell Dr. Lipkin  
14 when she is going to be in the office, when she's out of the  
15 office, what she's working on, what she is applying for. They  
16 have trouble communicating even on the grants they are working  
17 on as co-principal investigators.

18 So, as a result of that, and the other factor being  
19 plaintiff routinely treats staff administrative staff poorly in  
20 the center, has yelled at them and castigated publicly,  
21 embarrassed them. There have been complaints to Dr. Lipkin and  
22 others about how they've been treated by Dr. Hornig.

23 As a result, a decision was made -- this was not very  
24 recent, it was made some time ago, she probably should be  
25 transferred out of the center. As counsel noted, we have been

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1 mediating the case. That mediation concluded in May, in the  
2 middle of May. May 11. We were told by the mediator there  
3 would be no settlement possible at this time. What happened  
4 after, there was radio silence from plaintiff.

5 THE COURT: When you say "plaintiff," do you mean  
6 counsel?

7 MR. MORRISON: Both. But plaintiff was informed,  
8 mostly from counsel in terms of this case, there was no request  
9 for any kind of conference until the third week of June, so  
10 about a five-week delay.

11 But plaintiff was informed in the middle of May that  
12 she would be transferred out of the center. She then had  
13 e-mail correspondence with the dean there and was told the  
14 details, the parameters of that transfer, what would occur. So  
15 she knew exactly what was happening. She told the transfer  
16 would be occurring on June 1st.

17 THE COURT: When you say, was informed of the  
18 parameters. Are you talking sort of logistically or the  
19 reasons that she was being moved out?

20 MR. MORRISON: She was informed of the logistics and  
21 as well as the new set up in the letter from the dean who was  
22 in charge of administrative side of the transfer.

23 THE COURT: So she was aware of the office to which  
24 she was being moved?

25 MR. MORRISON: I believe she was at some point, toward

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1 the end of May, middle of June.

2 THE COURT: Is this before she went off on the trip?

3 MR. MORRISON: I don't know the exact timing.

4 However, we have clear e-mail correspondence informing her of  
5 the most important aspects of the transfer, which were she  
6 would essentially maintain the same salary, maintain the same  
7 resources, the same access to the lab, the same access to  
8 personnel that she has, she has all these things. And her  
9 complaints in the letter she wrote to one of the deans  
10 following the transfer related to things like that her office  
11 was not unpacked, she didn't have carpeting that she needed,  
12 she didn't like the furniture she had there. That it was a  
13 water issue or mold issue in the ceiling.

14 All these issues, and the correspondence will bear  
15 this out, have been addressed over and above and beyond what  
16 most people would do for anybody. A high-level administrator,  
17 dean of administration I believe of the department, came down,  
18 personally supervised the unpacking of her office, the bringing  
19 up additional furniture to her office. She wanted a desk they  
20 had in the center that had been purchased by Dr. Lipkin with  
21 his own funds, a special type of desk that would be brought  
22 down for her at her insistence. Carpeting was put in despite  
23 the fact that other faculty do not -- most faculty do not have  
24 carpeting. The water issue, an environmental remediation  
25 company was brought in to check on a mold issue. There was no

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1 finding of moisture or mold, and yet she still continued to  
2 complain.

3 THE COURT: This was at her request?

4 MR. MORRISON: Almost all -- some of it was at her  
5 request, some was at Columbia's own initiative in terms of  
6 environmental checking, making sure there was no mold or any  
7 kind of water problem.

8 THE COURT: Let me ask you just a couple questions.  
9 Was she -- and forgive if I'm using the wrong terminology --  
10 was she removed from the center? Not physically, but was she  
11 no longer a member of the center?

12 MR. MORRISON: She's no longer a member of the center  
13 but she's still a member of the department of epidemiology.  
14 She has the same title, associate professor. Her grants that  
15 she currently works on through the center are still worked on  
16 through the center. To the extent she'll goes to apply for new  
17 grants, it will be administered by the department of  
18 epidemiology which was always her department. And the chair of  
19 the department of epidemiology, instead of Dr. Lipkin, will now  
20 be the one who determines whether she can apply for the grant,  
21 whether it is approved, which is one of her main complaints in  
22 this case which we thought would be helpful to her.

23 THE COURT: Let me ask you this question. According  
24 to plaintiff's counsel she's -- again, I don't want to  
25 overstate -- but prohibited from or prevented from using the

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1 facilities at the center. Is that not the case?

2 MR. MORRISON: That's not correct. That's in writing.  
3 She can use the facility, she is allowed to travel to the  
4 facilities.

5 I think what occurred was that she wanted to go to the  
6 facilities after hours and found that her card key was  
7 deactivated, which she's not a member of the center, so she  
8 can't just access the center like anybody. She can go to the  
9 center during business hours or meet with someone who is a  
10 member of the center at any time in the center. To the extent  
11 she needs to, she also can use her own office, which is I  
12 believe now a few floors down from where she was previously  
13 sitting.

14 THE COURT: In the same building?

15 MR. MORRISON: Yes. And I think maybe what -- I hope  
16 I'm conveying the nature of these complaints here and the type  
17 of frivolous nature. She complained that because now she's no  
18 longer on the 17th floor, she is now on the seventh floor, and  
19 the lab space, which I'm not sure she travels to the lab space,  
20 but the lab space for the center which she can still use is on  
21 the 18th floor. She now has an elevator ride of a longer  
22 duration coming from the seventh floor as opposed to coming  
23 from the 17th floor. And she actually raised in a letter to  
24 the dean that she has too long of a travel time. Her commute  
25 is a few minutes longer than if she was coming from the 17th



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1 floor. This is the nature of the complaints that we've been  
2 dealing with.

3 There is certainly a legitimate, more than a  
4 sufficient legitimate business reason for why she was  
5 transferred, and in many ways she brought this upon herself.  
6 It was her failure to collaborate and communicate with others  
7 in the center which makes her not a good fit for them anymore.  
8 In fact, now as just being separate from the center in the  
9 department of epidemiology, she can apply for grants not  
10 through Dr. Lipkin, Dr. Lipkin having no role in the processing  
11 or the approval of those grants, which has been a complaint  
12 previously.

13 THE COURT: When did their personal relationship end?

14 MR. MORRISON: I believe 2011, approximately.

15 THE COURT: And is there documentation detailing when  
16 it was that folks started expressing concerns about her lack of  
17 collaboration, etc.?

18 MR. MORRISON: Various e-mail traffic, and there would  
19 be testimony from the various witnesses, yes, going back a  
20 number of years. I can't date it exactly, but it's been an  
21 ongoing thing. It's increased in intensity, and I think it  
22 really informs what's gone on here.

23 I would just make a few other points. This claim of  
24 harm is not irreparable harm, your Honor. The complaint  
25 claims, which was filed over a year ago in May of 2017, claims

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1 irreparable harm. Plaintiff on at least three occasions, her  
2 counsel has claimed that Dr. Lipkin's conduct vis-a-vis her in  
3 terms of a particular grant is causing her irreparable harm.  
4 They've threatened to move for injunctive relief before. They  
5 have not taken any action to do that nor to prosecute this  
6 case. Waiting five weeks after mediation had been concluded to  
7 even ask for a court conference.

8 THE COURT: Okay. Ms. Friedfel, is there anything you  
9 wanted to say?

10 MS. FRIEDFEL: Just very briefly. I would echo what  
11 Mr. Morrison just said. The issues with respect to  
12 Dr. Hornig's productivity did go back a number of years, and  
13 there was a certain level of tolerance where you try to  
14 encourage somebody to be productive and try to help them, and  
15 eventually there reaches a point after years of trying to  
16 encourage and assist, the person is still not productive. And  
17 there are tables that will demonstrate papers she was supposed  
18 to produce and deadlines for those papers and other lack of  
19 productivity and actual performance issues that Mr. Morrison  
20 didn't mention recently that was uncovered she had made some  
21 serious research errors that undermined the faith of the other  
22 members of the center in her science, and their willingness to  
23 collaborate on her based on her lack of professional scientific  
24 judgment and accuracy.

25 So those were the other motivating factors that I

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1 think went into the issues with the ability of the members of  
2 the center to work with Dr. Hornig.

3 MR. EISENBERG: Your Honor, if I might.

4 THE COURT: Briefly.

5 MR. EISENBERG: I heard counsel suggest that she was  
6 told prior to the move that she would have same resources, same  
7 access to personnel, and same access to lab space.

8 Can we get a commitment from defendants that she will  
9 have and does have and can have the same resources, same access  
10 to personnel, including coordinators, and same access to the  
11 center's space as she had two months ago, three months ago,  
12 three years ago?

13 Because if that's the representation, and that hasn't  
14 happened, we need to fix it.

15 MR. MORRISON: Your Honor, I think one part of the  
16 issue here in this case is the question of what she had and  
17 didn't have is in dispute. And I think it is very clear, and  
18 we put in a letter to the plaintiff in early June that she  
19 would maintain the same access to lab space and to her work and  
20 to her resources that she previously had.

21 What that is though, your Honor, I think the parties  
22 will disagree quite a bit. And as we just go through  
23 discovery, I'm sure the facts will bear out what Columbia's  
24 position is and has been.

25 THE COURT: Okay. Have the parties worked out a civil

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1 discovery plan?

2 MR. MORRISON: We have, your Honor. We've come to two  
3 scheduling orders. One which complies with your Honor's order  
4 of the six-month schedule. However, I think the parties have  
5 agreed that it is not realistic in this case to complete  
6 discovery in that time frame.

7 THE COURT: That's fine, that's fine.

8 MR. MORRISON: We've agreed on a one-year schedule.  
9 Given the volume of discovery that's anticipated, and in  
10 particular e-mail discovery which is likely to involve hundreds  
11 of thousands if not millions, over a million documents to be  
12 reviewed by Columbia. Which, as an academic institution,  
13 constitutes a significant burden. But I believe that's what  
14 we'll be confronted with.

15 THE COURT: The parties have agreed to that  
16 alternative schedule?

17 MR. MORRISON: We have.

18 THE COURT: So then just hand it up and we'll so order  
19 it.

20 MR. MORRISON: May I approach, your Honor?

21 THE COURT: You may. Absolutely. It has an outside  
22 discovery cutoff of one year. July 19, 2019. Based on the  
23 representations, I think that's a reasonable. We will go ahead  
24 and so order this and put it on ECF and set the subsequent  
25 conference will be on or after that date.

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1 Ms. Rivera.

2 THE DEPUTY CLERK: July 19, 2019, at 11 a.m.

3 THE COURT: Although I'm not expecting this to happen,  
4 if the parties, as they proceed through discovery, believe that  
5 a settlement may be in the offing and you think that chambers  
6 could be useful to you, simply contact chambers and I'll refer  
7 you to the assigned magistrate judge who in this case is  
8 Magistrate Judge Kevin Fox or to the mediator who tried to help  
9 you earlier. Okay.

10 MR. EISENBERG: Your Honor, we are concerned, and I  
11 apologize to beg your indulgence. But we believe in light of  
12 what was just said that we're going to seek some injunctive  
13 relief. We'd like to have some insight as to how you would  
14 like us to go about doing that. I understand through your  
15 motion practice schedule there should be letters going back and  
16 forth. We can do that. We could also just move.

17 THE COURT: If you're going to move, if you think this  
18 is something that is remediable through the extraordinary leap  
19 of Rule 65, you should make your motion.

20 MR. EISENBERG: Okay. Would you like us to do the  
21 letters back and forth?

22 THE COURT: No, there is no need for pre-motion  
23 letters.

24 MR. EISENBERG: Thank you.

25 THE COURT: Anything else? Anything from the back?

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1 MR. MORRISON: Nothing, your Honor.

2 THE COURT: We are adjourned. Thank you, folks.

3 (Adjourned)

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